

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RODNEY V. JOHNSON,
Plaintiff,

VS .

TRANE U.S. INC.
et al.,

Defendants.

No. 2:09-02691-JPM-tmp

ORDER GRANTING DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S SECOND AMENDED COMPLAINT
AND
ORDER STRIKING SECOND AMENDED COMPLAINT

On October 27, 2009, Plaintiff Rodney V. Johnson filed a pro se complaint alleging claims of discrimination, harassment, and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (Docket Entry ("D.E.") 1.) On January 11, 2010, Defendant filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) as barred by the applicable statute of limitations. (D.E. 9.) Plaintiff filed an amended complaint on January 27, 2010, in response to the motion to dismiss. (D.E. 13.) On February 15, 2010, Defendant filed a motion to dismiss Plaintiff's first amended complaint in its entirety on the grounds of res judicata.

On April 2, 2010, Plaintiff filed a second amended complaint (D.E. 22), without seeking leave of Court or, apparently, obtaining the consent of Defendant. Rule 15(a) of the Federal Rules of Civil Procedure provides, in pertinent part:

- (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
 - (A) 21 days after serving it, or
 - (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
- (2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Because Plaintiff amended his complaint once as a matter of right, he was not entitled to file a second amended complaint without leave of court. See Nicholson v. City of Westlake, 20 F. App'x. 400, 402 (6th Cir. 2001) (affirming district court's decision to strike plaintiff's amended complaint for failure to comply with Federal Rule of Civil Procedure 15(a)). Defendant's motion to strike Plaintiff's second amended complaint (D.E. 23) is GRANTED. The Clerk is directed to strike Plaintiff's second amended complaint (D.E. 22) from the docket.

IT IS SO ORDERED this 26th day of May, 2010.

/s/ Jon P. McCalla

JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE